Chapter 5: Common Forms of Contempt of Court

5.1 Introduction

This chapter contains information on common forms of contempt of court. The sections in this chapter contain the following elements:

- a quotation of an applicable statute or court rule or both authorizing the court to punish as contempt of court the acts in question; and

- summaries of case law and other law treating issues that commonly arise in cases involving the contumacious conduct in question.

In addition, Section 5.23 contains a table that indicates whether the acts described in this chapter constitute direct contempt or indirect contempt, and whether the acts may be treated as civil or criminal contempt of court.

Note that this chapter does not contain an exhaustive description of acts that are punishable using the court's contempt powers. See Section 1.4 for a discussion of the courts' inherent authority to cite persons for contempt of court.

5.2 Attorney's Misconduct in Courtroom

A. Statute

MCL 600.1701(a) allows a judge to punish misconduct in the courtroom, including misconduct by attorneys. That statute states:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> > (a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due its authority."

B. Zealous Representation or Contumacious Conduct?

In *People v Kurz,* 35 Mich App 643, 651 (1971), the Court of Appeals distinguished between zealous representation of a client's interests in court and contumacious conduct. The Court stated the following:

> "Unless a lawyer's conduct manifestly transgresses that which is permissible, it may not be the subject of charges of contempt. Any other rule would have a chilling effect on the constitutional right to effective representation and advocacy. In any case of doubt, the doubt should be resolved in the client's favor so that there will be adequate breathing room for courageous, vigorous, zealous advocacy."

In *Kurz,* defense counsel was charged with 107 instances of contempt, almost all of which involved the allegedly improper voicing of objections to questions asked by the prosecutor. See *Id.* at 661–79 for an appendix containing transcripts of some of the charged instances of misconduct.

In *In re Contempt of O'Neil,* 154 Mich App 245, 248 (1986), the trial court found a criminal defense attorney in contempt for continuing to argue an issue after the court made its ruling, and after the court warned the attorney that further argument would result in a contempt citation. The Court of Appeals affirmed, finding that by the time that the court warned the attorney, the attorney had fully advocated his client's position. For cases reaching similar results, see *In re Burns,* 19 Mich App 525, 526 (1969), and *In re Contempt of Peisner (People v Jackson),* 78 Mich App 642, 643 (1977).

To be subject to sanctions, the attorney's conduct must amount to a "wilful creation of an obstruction of the performance of judicial duty." *In re Meizlish,* 72 Mich App 732, 738 (1976), citing *Kurz, supra,* and *In re McConnell,* 370 US 230, 236 (1962). In *McConnell,* after the judge told the attorney to stop a certain line of questioning, the attorney asserted a right to ask the questions and stated that he planned to continue until the bailiff stopped him. The United States Supreme Court reversed the contempt citation against the attorney, finding that the attorney's mere statement that he planned to continue the questioning did not constitute an obstruction of justice.

The misconduct must constitute "an imminent, not merely likely threat to the administration of justice." *In re Little,* 404 US 553, 555 (1972).

C. Excusing the Jury

To avoid the appearance of partiality, the court should excuse the jury before an attorney is cited for contempt of court. *People v Williams,* 162 Mich App 542, 547 (1987).

5.3 Attorney's Failure to Appear in Court

A. Statute

MCL 600.1701(c) gives judges broad authority to punish attorneys for neglect of their duties to the court. That statute states:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or

both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(c) All *attorneys,* counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services, *for any misbehavior in their office or trust, or for any willful neglect or violation of duty,* for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge." (Emphasis added).

B. Attorney's Duty as Officer of Court

Because an attorney is an officer of the court as well as an agent of his or her client, the attorney has a duty to take timely affirmative action to notify the court if the attorney will not continue the representation. *In re Lewis (Shaw v Pimpleton),* 24 Mich App 265, 269 (1970), quoting *White v Sadler,* 350 Mich 511, 526 (1957).

The oft-quoted rationale for punishing an attorney for failing to appear in court comes from the case of *Arthur v Superior Court of Los Angeles County,* 62 Cal 2d 404, 411 (1965):

> "When an attorney fails to appear in court with his client, particularly in a criminal matter, the wheels of justice must temporarily grind to a halt. The client cannot be penalized, nor can the court proceed in the absence of counsel. Having allocated time for this case, the court is seldom able to substitute other matters. Thus the entire administration of justice falters. Without judicious use of contempt power, courts will have little authority over indifferent attorneys who disrupt the judicial process through failure to appear."

C. Indirect Contempt

An attorney's failure to appear in court at the appointed time constitutes indirect contempt. *In re Contempt of McRipley (People v Gardner),* 204 Mich App 298, 301 (1994), and *In re Henry,* 32 Mich App 654, 659 (1971).

D. Requirements for Finding Criminal Contempt

Wilful intent is not required for a finding of civil contempt. *McComb v Jacksonville Paper Co,* 336 US 187, 191 (1949), and *Catsman v City of Flint,* 18 Mich App 641, 646 (1969). If a judge feels that an attorney was merely negligent in not appearing in court, then civil contempt proceedings may be instituted. If civil contempt is found, then the judge must order the contemnor to pay damages for the injuries resulting from noncompliance with the court order. MCL 600.1721. See *In re Jacques,* 761 F2d 302, 305–06 (CA 6, 1985), and *In re Contempt of McRipley (People v Gardner),* 204 Mich App 298, 301–02 (1994) (attorney who failed to appear was properly ordered to reimburse county for costs of assembling jury panel). The court may also order the contemnor to pay a fine and the costs and expenses of the proceedings. MCL 600.1715(2).

In *In re Lumumba,* 113 Mich App 804, 813–14 (1982), the Court of Appeals concluded that "where an attorney makes a good faith effort to obtain a substitute lawyer for his client when the original attorney cannot appear, the failure to appear cannot be deemed wilful." The Court of Appeals reversed the trial court's finding of criminal contempt because the attorney in that case did make a good faith effort to secure a substitute attorney.

In *In re Hirsch,* 116 Mich App 233, 238 (1982), the Court of Appeals affirmed a finding of criminal contempt against an attorney who was ordered to be in Recorder's Court at 9:00 a.m. and in Macomb County Circuit Court at 11:00 a.m. The attorney chose not to obtain substitute counsel and not to appear in Recorder's Court. He did so because he felt he would not have time to drive from Recorder's Court to Macomb County Circuit Court. The Court of Appeals found that the attorney had made a wilful decision to violate the Recorder's Court order and upheld the finding of criminal contempt.

5.4 Failure of Witness to Attend Court After Being Served With a Subpoena

A. Statute and Court Rule

MCL 600.1701(i) governs the failure of witnesses to appear when required. That statute states, in pertinent part:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *

> (i) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, . . . in any of the following circumstances:
>
> (*i*) As a witness in any court in this state.
>
> (*ii*) Any officer of a court of record who is empowered to receive evidence.*
>
> (*iii*) Any commissioner appointed by any court of record to take testimony.
>
> (*iv*) Any referees or auditors appointed according to the law to hear any cause or matter.
>
> (*v*) Any notary public or other person before whom any affidavit or deposition is to be taken."

*See Section 1.6 for a discussion of the contempt powers of quasi-judicial officers.

MCR 2.506(E)(1) states, in pertinent part:

> "If a person fails to comply with a subpoena served in accordance with this rule . . . , the failure may be considered a contempt of court by the court in which the action is pending."

B. Indirect Contempt

Because the court must rely on the testimony of others to determine the reason for the witness's failure to appear, and because immediate action is not necessary to preserve the court's authority, the court may not summarily punish a witness's failure to appear. *In re Contempt of Robertson (Davilla v Fischer Corp),* 209 Mich App 433, 440–41 (1995).*

*See Section 2.4 for discussion of summary punishment of contempt.

5.5 Juror Misconduct

Juror misconduct is addressed in MCL 600.1346, which states in pertinent part:

> "The following acts are punishable by the circuit court as contempts of court:

*All prospective jurors are required to complete a "juror personal history questionnaire" prior to jury service. See MCR 2.510.

*See also Section 5.20, below, for a discussion of attempting to improperly influence jurors.

> (a) Failing to answer the questionnaire provided for in [MCL 600.1313].*
>
> * * *
>
> (e) Failing to attend court, without being excused, at the time specified in the notice, or from day to day, when summoned as a juror."

MCL 600.1701(j) states that all courts of record may punish for contempt:

> "Persons summoned as jurors in any court, for improperly conversing with any party to an action which is to be tried in that court, or with any other person in regard to merits of the action, or for receiving communications from any party to the action or any other person in relation to the merits of the action without immediately disclosing the communications to the court."*

5.6 Violation of Court Orders

A. Statute

MCL 600.1701(g) contains the Revised Judicature Act's general provision regarding violations of court orders:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
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> * * *
>
> (g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court."

Note: Other statutes make specific provision for particular types of court orders and take precedence over the RJA provision in those cases. See Sections 5.7 and 5.9–5.11, below.

B. Civil or Criminal Contempt Proceedings

A court may find persons who have violated a court order guilty of either civil or criminal contempt. *Ann Arbor v Danish News Co,* 139 Mich App 218, 231–32 (1984), and *State Bar v Cramer,* 399 Mich 116, 126–28 (1976).* Willfulness is not necessary to support a finding of civil contempt; negligent violation of an order is sufficient. *In re Contempt of United Stationers Supply Co,* 239 Mich App 496, 499–501 (2000).

*See Section 2.1 for a discussion of the distinction between civil and criminal contempt proceedings.

In *In re Contempt of Dougherty,* 429 Mich 81 (1987), defendants were found in civil contempt of court for violating a permanent injunction prohibiting them from trespassing on the plaintiff's property and hindering access to plaintiff's industrial plant. The defendants were jailed until they promised not to violate the injunction in the future. The Supreme Court held that the trial court erred by imposing a coercive sanction for a past violation of the injunction. Because the violation occurred in the past and the defendants were in compliance with the injunction at the time of the contempt hearing, the trial court was limited to instituting criminal contempt proceedings and imposing criminal contempt sanctions upon defendants, or to issuing a civil contempt order compensating plaintiffs for actual losses caused by defendants' actions. *Id.* at 87.

C. Even Clearly Incorrect Orders Must Be Obeyed

An order entered by a court of proper jurisdiction must be obeyed even if the order is clearly incorrect. *Kirby v Michigan High School Athletic Ass'n,* 459 Mich 23, 40 (1998), and *Ann Arbor v Danish News Co,* 139 Mich App 218, 229 (1984).* In *State Bar v Cramer,* 399 Mich 116, 125 (1976), the Michigan Supreme Court stated that "persons who make private determinations of the law and refuse to obey an order generally risk *criminal* contempt even if the order is ultimately ruled incorrect" (emphasis added). The trial court continues to have jurisdiction to enforce its order until such time that an appellate court dissolves the order. *Danish News, supra* at 229–30.

*See Section 1.7 for case law that holds that orders issued by a court *without jurisdiction* are invalid and need not be obeyed.

> **Note:** MCR 2.614(C) allows the trial court to suspend an injunction pending appeal, and MCR 7.209(A)(1) allows the Court of Appeals to stay a trial court's order pending appeal.

In *Schoensee v Bennett,* 228 Mich App 305, 317 (1998), the attorney for a party in divorce proceedings was properly cited for contempt and ordered to pay damages, where the attorney failed to advise her client to obey a court order pending appeal. Although the attorney did not instruct her client to disobey the order, her failure to advise her client to obey the order had the same effect.

In *Johnson v White*, 261 Mich App 332, 335 (2004), the Court of Appeals reversed a lower court's finding of contempt against a defendant for

violating the court's order for grandparent visitation. On January 10, 2001, the lower court entered an order for grandparent visitation. Three months later, the defendant violated the order by moving his children to another state. On January 25, 2002, the Court of Appeals issued its decision in *DeRose v DeRose*, 249 Mich App 388 (2002), which found the grandparent visitation statute, MCL 722.27b, unconstitutional. On March 28, 2002, the lower court found the defendant in contempt of court for violating its order. The trial court subsequently denied the defendant's motion to vacate the contempt order.

The defendant argued on appeal that the contempt order should have been vacated because the lower court lacked subject matter jurisdiction over the grandparent visitation issue because of the Court of Appeals decision in *DeRose*, *supra.* The defendant claimed that MCR 7.215(C)(2) required the lower court to give immediate precedential effect to *DeRose* even though, at the time of the show-cause hearing, an appeal of the decision in *DeRose* was pending in the Supreme Court. MCR 7.215(C)(2) states that a published Court of Appeals opinion has precedential effect and the "filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion . . . ." *Johnson, supra* at 346. The trial court disagreed and ruled that MCR 7.215(C)(2) should be read in conjunction with MCR 7.215(F)(1)(a), which states that a "Court of Appeals judgment is effective after the expiration of the time for filing a timely application for leave to appeal the Supreme Court, or, . . . after the disposition of the case by the Supreme Court." *Johnson, supra* at 347.

The Court of Appeals found the trial court's reliance on MCR 7.215(F)(1)(a) misplaced. The Court of Appeals stated that MCR 7.215(F)(1)(a) "pertains to the timing of when our judgment becomes final in regards to the parties to the appeal and its enforceability as to those parties by the trial court that presided over the case." *Johnson, supra*. The Court also indicated that MCR 7.215(C)(2) clearly provides that filing an application for leave to appeal to the Supreme Court or an order granting leave does not change the precedential effect of the decision of the Court of Appeals. The Court concluded that the trial court erred in determining that it did not need to give *DeRose*, *supra*, precedential effect.

The Court of Appeals, citing *Kirby, supra*, recognized that an order of the court must be complied with at the time it is entered even if the order is clearly incorrect. Quoting *In re Contempt of Dudzinski,* 257 Mich App 96, 111 (2003), the Court also recognized that "[a] person may not disregard a court order simply on the basis of his [or her] subjective view that the order is wrong or will be declared invalid on appeal." *Johnson, supra* at 346. However, the Court noted that these rules only apply to "an order issued by a court *with jurisdiction over the subject matter* and the person." (Emphasis in original.) At the time the defendant was held in contempt, the opinion in *DeRose, supra* had already been issued. Therefore, *DeRose* had binding precedential effect, and the lower court was without jurisdiction over the

subject matter of the contempt order. Because the lower court lacked subject matter jurisdiction when it entered the contempt order, the Court of Appeals reversed the lower court's finding of contempt. *Johnson, supra* at 349–50.

D. Reliance on Attorney's Advice

In *In re Contempt of Rapanos,* 143 Mich App 483, 495 (1985), the Court of Appeals held that if an individual relies in good faith upon his or her attorney's advice, that individual has not wilfully violated a court order and therefore may not be found guilty of *criminal* contempt. The Court of Appeals in *Rapanos* cited with approval *Proudfit Loose Leaf Co v Kalamazoo Loose Leaf Binder Co,* 230 F 120, 132 (CA 6, 1916). Acting under counsel's advice, however, is not a defense to *civil* contempt charges. *McComb v Jacksonville Paper Co,* 336 US 187, 191 (1949). In *Chapel v Hull,* 60 Mich 167, 175 (1886), the Michigan Supreme Court held that where a client acted under his attorney's advice in violating an injunction, the client was liable for the actual damages caused by that behavior.

E. Injunctions

MCR 3.310(C)(4) states that an injunctive order "is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

In *Cross Co v UAW Local No 155 (AFL-CIO),* 377 Mich 202, 216–17 (1966), union members' actual knowledge of the injunctive order was properly inferred, where a copy of the order was posted at the site of union picketing, and the order was issued one month prior to the charged acts of contempt. See also *DeKuyper v DeKuyper,* 365 Mich 487 (1962) (where a bank was served with an injunctive order though not made a party to the underlying action, bank employees' actual knowledge of the order made it effective against the bank).

Courts have punished contemnors for violation of injunctive orders by subterfuge or in bad faith. See *Gover v Malloka,* 242 Mich 34, 36 (1928), *Craig v Kelly,* 311 Mich 167, 178 (1945), and *In re Contempt of Rapanos,* 143 Mich App 483, 489–90 (1985).

5.7 Violation of Court Order Regarding Nuisance

A. Statute

The power to issue injunctive orders to abate public nuisances is conferred upon circuit courts by MCL 600.3805. Sanctions for violations of such orders are governed by MCL 600.3820, which states:

> "If any order or injunction granted under the provisions of this chapter is violated, the court may summarily try and punish the offender as for contempt, and the person so offending shall be punished by a fine of not more than $1,000.00, or by imprisonment in the county jail not more than 6 months, or by both fine and imprisonment, in the discretion of the court. Such violation shall be charged by a motion supported by affidavit, and the court, if satisfied of the sufficiency thereof, shall immediately issue a bench warrant for the arrest of such offender and to bring him before such court to answer for such misconduct. The court may, in its discretion, permit such person arrested to give bail and fix the amount thereof pending hearing of the matters charged in such motion."

B. Criminal Contempt

Contempt proceedings under the public nuisance statutes have been held criminal in nature. *People v Goodman,* 17 Mich App 175, 178 (1969), *People v Randazzo,* 21 Mich App 215, 216 (1970), and *Michigan ex rel Wayne Pros v Powers,* 97 Mich App 166, 171 (1980). The *Powers* court stated that the purpose of contempt proceedings for violation of an order enjoining a public nuisance is to punish for past disobedience of the injunctive order.

5.8 Failure to Pay Money Judgment

A. Statute

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid, *in cases where by law execution cannot be awarded for the collection of the sum.*" MCL 600.1701(e) (emphasis added).

B. Rationale for Limitation on Use of Contempt Power to Enforce Money Judgments

Money judgments, including the property settlement provisions of a divorce judgment, generally may not be enforced by contempt proceedings. *Belting v Wayne Circuit Judge,* 245 Mich 111 (1929), *Thomas v Thomas,* 337 Mich 510, 513–14 (1953), and *Guynn v Guynn,* 194 Mich App 1, 2–3 (1992).

This restriction on the use of contempt power is a necessary outgrowth of the constitutional prohibition against imprisonment for "debt arising out of or founded on contract, express or implied . . . ." Const 1963, art 1, § 21. See also *Brownwell Corp v Ginsky,* 247 Mich 201 (1929) (prohibition applies even if the court orders the money paid into the court). "The process of contempt to enforce civil remedies is one of those extreme resorts which cannot be justified if there is any other adequate remedy." *Haines v Haines,* 35 Mich 138, 144 (1876). See also *Atchison, T & S F R Co v Wayne Circuit Judge,* 60 Mich 232 (1886).

C. Exception: Specific Fund or Article

Case law has permitted an order for transfer of a specific fund or article to be enforced by contempt proceedings. *Carnahan v Carnahan,* 143 Mich 390 (1906), and *American Oil Co v Suhonen,* 71 Mich App 736 (1976). The *Carnahan* and *Suhonen* decisions both held that when the decree is not for payment of money but for delivery of a specific fund, it is distinguishable from the payment of a debt, and the use of the contempt power for enforcement of the order is appropriate.

In *Carnahan*, *supra* at 397, the wife had been ordered to transfer a specific fund she maintained in a Canadian bank to her former husband. A finding of contempt for her refusal to do so was affirmed by the Supreme Court, which noted:

> "This is not a decree for payment of money in the ordinary sense. It is not subject to the exemption law. The decree requires delivery of the specific thing—i.e., the fund—in contradistinction to the payment of a debt, and a writ of execution is not appropriate in such a case."

In *Suhonen, supra* at 741, the Court of Appeals relied on *Carnahan* in affirming the trial court's contempt citation, where an oil company salesman failed to pay to the company $3,300.00 in an account subject to his control as directed by the trial judge. The Court stated:

> "The Court has repeatedly reaffirmed the 'specific' or 'special fund' exception to the execution requirement of the statute, applying an implicit trustee-beneficiary

> analysis. By contrast, in clear debtor-creditor situations the traditional remedy of execution has been required."

In *Schaheen v Schaheen,* 17 Mich App 147 (1969), the Court of Appeals affirmed the contempt citation, where the plaintiff-husband refused to comply with the court order that he execute a deed to his former wife of income-producing real property situated in Beirut, Lebanon. The court did so on the basis of its conclusion that transfer of the property was covered by the "specific fund or article" rule.

D. Exception: Duty to Pay Arising From a Fiduciary Relationship

Where the duty to pay arises from a fiduciary relationship between the parties, the use of contempt proceedings has been upheld. For example, in *Maljak v Murphy,* 22 Mich App 380 (1970), a contempt citation was affirmed, where the contemnor refused to refund an unearned attorney fee to the estate of his former client. In doing so, the Court of Appeals emphasized that the attorney was "not an ordinary debtor" but rather someone who "bears a special responsibility" and is subject to the power of the circuit court "to make any order for the payment of money or for the performance of any act by the attorney which law and justice may require." *Id.* at 385, quoting GCR 1963, 908 (now MCR 8.122).

E. Exception: Child or Spousal Support

*See Section 5.9, immediately below, for a discussion of this provision.

MCL 552.631 permits an order for child support or spousal support to be enforced by use of the contempt power.* In *Schoensee v Bennett,* 228 Mich App 305, 317 (1998), the Court of Appeals held that an award of attorney fees in a child custody action is not a money judgment and is therefore enforceable by contempt proceedings.

5.9 Failure to Pay Child or Spousal Support

A. Statutes

Use of the contempt power to enforce child or spousal support orders is provided for in MCL 600.1701(f):

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (f) Parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to

> comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance."

The Support and Parenting Time Enforcement Act, MCL 552.601 et seq.,* also provides for the use of contempt powers to enforce child or spousal support orders:

*MCR 3.208 governs procedure under this Act.

> "(1) If a person is ordered to pay support under a support order and fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the office of the friend of the court may commence a civil contempt proceeding by filing in the circuit court a petition for an order to show cause why the delinquent payer should not be held in contempt. If the payer fails to appear in response to an order to show cause, the court shall do 1 or more of the following:
>
> > (a) Find the payer in contempt for failure to appear.
> >
> > (b) Find the payer in contempt for the reasons stated in the motion for the show cause hearing.
> >
> > (c) Apply an enforcement remedy authorized under this act or the friend of the court act for the nonpayment of support.
> >
> > (d) Issue a bench warrant for the payer's arrest requiring that the payer be brought before the court without unnecessary delay for further proceedings in connection with the show cause or contempt proceedings.
> >
> > (e) Adjourn the hearing.
> >
> > (f) Dismiss the order to show cause if the court determines that the payer is not in contempt." MCL 552.631(1)(a)–(f).

The Support and Parenting Time Enforcement Act defines "support" to include all of the following:

*See MCL 552.626, on contempt sanctions for failure to maintain health care coverage.

*Under MCL 722.719(3), the court may use its contempt powers to enforce such orders.

> "(*i*) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care,* child care expenses, and educational expenses.
>
> "(*ii*) The payment of money ordered by the circuit court under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses.*
>
> "(*iii*) A surcharge under section 3a." MCL 552.602(ff)(*i*)–(*iii*).

Note: The property settlement provisions of a divorce judgment may not be enforced using the contempt power. See Section 5.8(B).

Under MCL 552.613, the court may find an "income source" guilty of contempt for violating an order of income withholding. MCL 552.625 provides the court with additional remedies, including executing the judgment and appointing a receiver.

An employer may be held in civil contempt of court for negligently failing to comply with a court order appointing a Friend of the Court receiver of any worker's compensation settlement to defray a child support arrearage. *In re Contempt of Cornbelt Beef Corp,* 164 Mich App 114, 118–19 (1987), and *In re Contempt of United Stationers Supply Co,* 239 Mich App 496, 499–501 (2000). In both cases, a support payer's employer was served with a copy of the receivership order but paid settlement funds directly to the support payer. Service of a copy of the receivership order by certified mail, return receipt requested, is sufficient. *Cornbelt Beef Corp, supra* at 117, 120, and *United Stationers Supply Co, supra* at 501–03. In such cases, a court may order the employer to pay the support recipient (i.e., the custodial parent) damages in the amount of the arrearage to be paid from the settlement, attorney fees, costs, and judgment interest. *Cornbelt Beef Corp, supra* at 119, and *United Stationers Supply Co, supra* at 498–99; MCL 600.1721.

B. Right to Counsel

In *Mead v Batchlor,* 435 Mich 480, 498 (1990), the Michigan Supreme Court, relying on *Lassiter v Dep't of Social Services,* 452 US 18, 25–27 (1981), concluded that the civil or criminal nature of a proceeding is not the determining factor in deciding whether procedural due process requires the

appointment of counsel. Rather, the right to appointed counsel is triggered by a person's fundamental interest in physical liberty. The Court stated:

> "Accordingly, we hold that the Due Process Clause of the Fourteenth Amendment precludes incarceration of an indigent defendant in a contempt proceeding for nonpayment of child support if the indigent has been denied the assistance of counsel. . . .
>
> "In any contempt proceeding for nonsupport, the court should assess the likelihood that the defendant may be incarcerated, and particularly in light of MCL 552.637; MSA 25.164(37), which requires the use of other remedies to the extent possible." *Id.* at 505–06 (footnote omitted).

The court must focus on whether the defendant is indigent under the guidelines established by AO 1972-4, 387 Mich xxx, and may not rely on the statutory presumption of ability to pay contained in MCL 552.633.* *Mead, supra* at 505–06.

*See Section 5.9(E), below, on the statutory presumption.

C. Ability to Pay Support Arrearage and Sanctions

Three sections of the Support and Parenting Time Enforcement Act, MCL 552.601 et seq., govern support arrearages and associated sanctions.

- Under MCL 552.633, the court may impose sanctions on a payer who has the present ability to pay but has failed or refused to do so.
- Under MCL 552.635, the court may impose sanctions on a payer who could have the ability to pay by exercising due diligence but has failed or refused to exercise due diligence.
- Sanctions are listed in MCL 552.637 and differ depending upon the payer's circumstances.

Note that under MCL 552.637 an order of commitment under either §33 or §35 may be entered "only if other remedies appear unlikely to correct the payer's failure or refusal to pay support." MCL 552.637(1).

MCL 552.633(1) provides the court may find a payer in contempt if the court finds the payer in arrears and the court is satisfied that the payer has the "capacity to pay out of currently available resources" all or some portion of the amount due under the order. If the payer does not show the court otherwise, the court must presume that the payer has currently available resources equal to four weeks of payments under the order. The court must not find that the payer has currently available resources of more than four weeks of payments without proof from the Friend of the Court or the

recipient of the support. MCL 552.663(1). If the court finds a payer in contempt of court pursuant to MCL 552.633(1), the court may enter an order doing one or more of the following:

> "(a) Committing the payer to the county jail.
>
> "(b) Committing the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to go to and return from his or her place of employment.
>
> "(c) Committing the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.
>
> "(d) If the payer holds an occupational license, driver's license, or recreational or sporting license, conditioning a suspension of the payer's license, or any combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for 2 months under the payer's support order.
>
> "(e) Ordering the payer to participate in a work activity. This subdivision does not alter the court's authority to include provisions in an order issued under this section concerning a payer's employment or his or her seeking of employment as that authority exists on August 10, 1998.
>
> "(f) If available within the court's jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.
>
> "(g) Except as provided by federal law and regulations, ordering the parent to pay a fine of not more than $100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in . . . MCL 600.2530."

MCL 552.635(1) provides that the court may find a payer in contempt if the court finds the payer is in arrears and one of the following:

- The court is satisfied that by the "exercise of diligence" the payer could have the capacity to pay all or some portion of the support ordered and the payer fails or refuses to do so.
- The payer has failed to obtain a source of income and has failed to participate in a work activity after referral by the Friend of the Court.

If the court finds the payer in contempt pursuant to MCL 552.635(1), then pursuant to MCL 552.635(2)(a)–(d), the court shall, absent good cause to the contrary, immediately order the payer to participate in a work activity and may also enter an order doing one or more of the following:

> "(a) Commit the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to participate in a work activity.
>
> "(b) If the payer holds an occupational license, driver's license, or recreational or sporting license, condition a suspension of the payer's license, or a combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for 2 months under the payer's support order.
>
> "(c) If available within the court's jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.
>
> "(d) Except as provided by federal law and regulations, order the parent to pay a fine of not more than $100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in . . . MCL 600.2530."

The order of commitment must continue until the amount ordered to be paid is paid, but must not exceed 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt. MCL 552.637(4).

Regardless of the length of commitment imposed by the court, an unemployed payer who finds employment while committed to jail pursuant to §35 shall be released if either (1) the payer is self-employed and has

completed two consecutive weeks at his or her employment, or (2) the payer is employed and has completed two weeks at work and an order of income withholding is effective. MCL 552.635(3)(a) and (b).

Two additional sanctions are available under both §33 and §35. The court may condition the suspension of the payer's occupational, driver's, or sporting license upon payment of the arrearage. MCL 552.633(1)(d) and MCL 552.635(2)(b). In addition, the court may order the payer to participate in work activity if the arrearage is for the support of a child who is also receiving social security benefits. MCL 552.633(1)(e) and MCL 552.635(2)(c).

D. Determining Ability to Pay

The present form of the statutes governing collection of support arrearages can be traced to the Michigan Supreme Court's decision in *Sword v Sword,* 399 Mich 367 (1976), overruled on other grounds 435 Mich 480, 506 (1990). In *Sword, supra* at 379, the Supreme Court held:

> "If the judge concludes from the testimony of defendant and others that defendant has 'sufficient ability to comply with' the order or 'by the exercise of due diligence could be of sufficient ability, and has neglected or refused' to comply, defendant may be found in contempt of court."

In determining whether a payer has or should have the ability to pay, the court should consider:

- employment skills, including the reasons for any termination;
- education and skills;
- work opportunities;
- effort in seeking work;
- personal history, including present marital status and means of support;
- assets and any transfer of assets;
- efforts to modify the support order claimed to be excessive;
- health and physical ability;
- availability for work (periods of hospitalization and imprisonment); and
- the location of the payer since the decree and reasons for moves.

Sword, supra at 378–79. See also *Wells v Wells,* 144 Mich App 722, 732 (1985) (determination must be made on case-by-case basis).

In *Gonzalez v Gonzalez,* 121 Mich App 289, 291 (1982) the Court of Appeals held that where the record demonstrated that defendant had no means of support other than ADC benefits, an order to pay a portion of an arrearage or go to jail for 90 days was beyond the power of the court. See also *Borden v Borden,* 67 Mich App 45 (1976), and *Causley v LaFreniere,* 78 Mich App 250, 252–53 (1977) (Court of Appeals approved an order to pay child support from future wages but hold in abeyance collection of arrearage until defendant was employed).

E. Statutory Presumption of Ability to Pay

MCL 552.633 provides that in the absence of proof to the contrary, the court shall presume the payer has currently available resources equal to four weeks of support payments. In *Hicks on Behalf of Feicock v Feicock,* 485 US 624 (1988), the United States Supreme Court held that a statutory presumption of ability to pay would violate procedural due process requirements in a criminal contempt proceeding, but not in a civil contempt proceeding.

In *Deal v Deal,* 197 Mich App 739, 743–44 (1993), the Court of Appeals affirmed the defendant's contempt citation, where the trial court ordered defendant to pay an amount that exceeded four weeks of support payments to avoid being jailed, but where defendant's counsel admitted defendant's ability to pay and represented that defendant was making regular support payments.

F. Civil or Criminal Contempt Proceedings

Contempt proceedings for nonsupport are usually civil in character. MCL 552.631(1) provides that civil contempt proceedings may be instituted following a failure to pay. There may be circumstances, however, where the court wishes to charge the defendant with criminal rather than civil contempt. This could occur where a defendant has wilfully violated a support order in the past and has no present ability to comply. For example, a defendant may have received a substantial sum of money by way of settlement of a tort claim and may have been required by prior order to use a substantial portion of that settlement to pay past due child support. If the defendant failed to do so and now has no funds with which to pay support, the court might choose to proceed on the basis of criminal contempt. In such a situation, it would be wise for the court to refer the case to the prosecutor for possible initiation of criminal contempt proceedings. The statutory authority permitting such action is MCL 552.627(d)(1), which states that the circuit court may take other enforcement under the applicable laws, including the general contempt statutes. The court may not, however, sentence defendant to a fixed jail term without complying with all of the

procedural protections required for a criminal contempt case. *Borden v Borden,* 67 Mich App 45, 49 n 1 (1976).

G. Waiver of Contempt and Hearing on Modification of Support Order

MCL 552.17a(2) allows the court to waive the contempt in certain circumstances. That provision states:

> "Upon an application for modification of a judgment or order when applicant is in contempt, for cause shown, the court may waive the contempt and proceed to a hearing without prejudice to applicant's rights and render a determination on the merits."

5.10 Violation of Parenting Time Orders in Divorce Judgments

A. Statute

*See MCL 552.602(m) for the definition of "friend of the court case."

The Support and Parenting Time Enforcement Act, MCL 552.641(1), requires the Friend of the Court, for a "friend of the court case,"* to take one or more of the following actions on an alleged custody or parenting time order violation:

- Apply a makeup parenting time policy under MCL 552.642.
- Commence civil contempt proceedings under MCL 552.644. If a parent fails to appear in response to an order to show cause, the court may issue a bench warrant, and, except for good cause shown on the record, shall order the parent to pay the costs of the hearing, the issuance of the warrant, the arrest, and further hearings. MCL 552.644(5).
- File a motion pursuant to MCL 552.517d for a modification of the existing parenting time provisions to ensure parenting time, unless it would be contrary to the best interests of the child.
- Schedule mediation pursuant to MCL 552.13.
- Schedule a joint meeting under MCL 552.542a.

MCL 552.641(2) permits the Friend of the Court to decline to take one of the foregoing actions if any of the following circumstances apply:

> "(a) The party submitting the complaint has previously submitted 2 or more complaints alleging custody or parenting time order violations that were found to be unwarranted, costs were assessed against the party

because the complaint was found to be unwarranted, and the party has not paid those costs.

"(b) The alleged custody or parenting time order violation occurred more than 56 days before the complaint is submitted.

"(c) The custody or parenting time order does not include an enforceable provision that is relevant to the custody or parenting time order violation alleged in the complaint."

If the court finds that a parent has violated a custody or parenting time order without good cause,* the court must find that parent in contempt. MCL 552.644(2). MCL 552.644(2)(a)–(h) provide that once the court finds a parent in contempt, it may do one or more of the following:

*"Good cause" includes, but is not limited to, consideration of the safety of a child or a party who is governed by the parenting time order. MCL 552.644(3).

"(a) Require additional terms and conditions consistent with the court's parenting time order.

"(b) After notice to both parties and a hearing, if requested by a party, on a proposed modification of parenting time, modify the parenting time order to meet the best interests of the child.

"(c) Order that makeup parenting time be provided for the wrongfully denied parent to take the place of wrongfully denied parenting time.

"(d) Order the parent to pay a fine of not more than $100.00.

"(e) Commit the parent to the county jail.

"(f) Commit the parent to the county jail with the privilege of leaving the jail during the hours the court determines necessary, and under the supervision the court considers necessary, for the purpose of allowing the parent to go to and return from his or her place of employment.

"(g) If the parent holds an occupational license, driver's license, or recreational or sporting license, condition the suspension of the license, or any combination of the licenses, upon noncompliance with an order for makeup and ongoing parenting time.

"(h) If available within the court's jurisdiction, order the parent to participate in a community corrections program

> established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414."

The court must state on the record the reason it is not ordering a sanction listed in MCL 522.644(2)(a)–(h). MCL 552.644(3).

If the court finds a party to a parenting time dispute has acted in bad faith, the court must order the party to pay a sanction and to pay the other party's costs. MCL 552.644(6) and MCL 552.644(7). The first time a party acts in bad faith the sanction may not exceed $250.00. The second time a party acts in bad faith the sanction may not exceed $500.00. Sanctions for any third or subsequent finding that a party has acted in bad faith may not exceed $1,000.00. MCL 552.644(6).

See MCR 3.208 for the required procedures.

B. Civil or Criminal Contempt Proceedings

Where it is possible to restore the status quo by granting additional parenting time, the proceeding is civil in nature. The defendant must be given an opportunity to purge the contempt by complying with conditions set forth by the judge to remedy the violation. *Watters v Watters,* 112 Mich App 1, 10 (1981), and *Casbergue v Casbergue,* 124 Mich App 491, 495 (1983). However, where the status quo has been so altered that it cannot be restored, there is criminal contempt. The defendant must then be proven guilty beyond a reasonable doubt and cannot be compelled to testify against himself or herself. *Jaikins v Jaikins,* 12 Mich App 115, 121 (1968).

The court may not order a change of custody as punishment for contempt of court for violation of a parenting time order. *Bylinski v Bylinski,* 25 Mich App 227, 229 (1970).

5.11 Violations of Personal Protection Orders (PPOs)

A violation of a PPO subjects the offender to sanctions as provided in MCL 600.2950 ("domestic relationship" PPOs) and MCL 600.2950a (non-domestic relationship "stalking" PPOs). These statutes provide for criminal contempt penalties consisting of a maximum 93-day jail term and a possible fine of $500.00:

> "An individual who is 17 years of age or more and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 93 days and may be fined not more than $500.00." MCL 600.2950(23). See MCL 600.2950a(20) for a similar provision.

MCL 712A.2(h) assigns jurisdiction of PPO actions involving minor respondents to the Family Division of Circuit Court.*

*See Section 5.22(C) for further discussion.

Because PPO violations typically involve past violations of the court's order and situations where the status quo cannot be restored, criminal contempt sanctions are usually imposed. In rare cases (e.g., where the respondent refuses to relinquish property), civil contempt sanctions may be appropriate; in these cases, MCL 600.1715 applies. See MCL 600.2950(26) and MCL 600.2950a(24). The person injured by a PPO violation may also recover damages under MCL 600.1721.

For information on procedures in contempt proceedings instituted after a PPO violation, see MCR 3.708.

An exhaustive discussion of the enforcement issues arising from PPO violations is beyond the scope of this benchbook. For a complete discussion of the enforcement of PPOs, see Lovik, *Domestic Violence Benchbook: A Guide to Civil & Criminal Proceedings (3d ed)* (MJI, 2004), Chapter 8.

5.12 Criminal Defendant's Disruptive Behavior in Court

A. Statute

MCL 600.1701(a) covers contempt proceedings against criminal defendants who engage in disruptive conduct in the courtroom:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> > (a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due its authority."

B. Constitutional Right to Be Present at Trial

A criminal defendant's constitutional right to confront his or her accusers, US Const, Am VI, and Const 1963, art 1, § 20, encompasses the ancillary right to be present in the courtroom during trial.* *Lewis v United States,* 146 US 370 (1892). However, a defendant may waive that right by his or her conduct in the courtroom. In *Illinois v Allen,* 397 US 337, 343 (1970), the court stated:

*See also MCL 768.3 (statutory right to be present at trial).

> ". . . we explicitly hold today that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings."

C. Constitutionally Permissible Solutions

The Court in *Allen* went on to discuss three constitutionally permissible approaches a trial judge may use in handling an obstreperous defendant.

First, the trial court may cite or threaten to cite the defendant for contempt. Criminal contempt may be used to punish the conduct and may deter the defendant from similar future conduct. See *People v Ahumada,* 222 Mich App 612, 617–18 (1997). Obviously, if the sanctions for criminal contempt pale in comparison to the penalty for the offense charged, criminal contempt may be of little use. Civil contempt may be used and the defendant jailed until he or she acts properly. This remedy leaves the defendant in charge of the trial process, however.

Second, the trial court may order the defendant bound and gagged. This has the advantage of leaving control with the judge and of assuring the defendant's presence, but it lessens the decorum and dignity of the court, prevents communication between attorney and client, and detracts from the factfinder's ability to impartially assess the merits of the case. See, generally, *People v Kerridge,* 20 Mich App 184, 186–88 (1969), and *People v Reynold,* 20 Mich App 397, 400–01 (1969).

Third, the trial court may, if necessary, order the defendant removed from the courtroom until the defendant is willing to conduct himself or herself in an orderly manner.

Michigan courts have relied upon *Allen* in affirming convictions where the defendant's conduct resulted in his absence at trial. *People v Harris,* 80 Mich App 228, 229–30 (1977) (waiver of constitutional right to be present by defendant's disruptive behavior), and *People v Travis,* 85 Mich App 297, 300–03 (1978) (waiver of constitutional right to be present by defendant's voluntary absence from trial).

5.13 Witness's Refusal to Testify

A. Statutes and Court Rule

MCL 600.1701(i)(*i*) states, in pertinent part:*

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (i) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, or when sworn, to answer any legal and proper interrogatory in any of the following circumstances:
>
> (*i*) As a witness in any court in this state.

*Other statutes also allow tribunals to punish as contempt a witness's refusal to testify. See, for example, MCL 418.853 and MCL 780.703.

In addition, MCR 2.506(E)(2) provides:

> "If a person refuses to be sworn or to testify regarding a matter not privileged after being ordered to do so by the court, the refusal may be considered a contempt of court."

MCL 600.1725 provides the penalty for a witness's refusal to testify. That statute states:

> "If any witness attending pursuant to a subpoena, or brought before any court, judge, officer, commissioner, or before any person before whom depositions may be taken, refuses without reasonable cause
>
> "(1) to be examined, or
>
> "(2) to answer any legal and pertinent question, or
>
> "(3) to subscribe his deposition after it has been reduced to writing, the officer issuing the subpoena shall commit him, by warrant, to the common jail of the county in which he resides. He shall remain there until he submits to be examined, or to answer, or to subscribe his

> deposition, as the case may be, or until he is discharged according to law."

B. Fifth Amendment Privilege Against Self-Incrimination

The Michigan Supreme Court has stated that where it is apparent the answer could not injure a witness, the court should compel the witness to answer and may summarily punish the witness for a refusal to answer. *In re Bommarito,* 270 Mich 455, 458-459 (1935). "The Constitution does not permit the witness 'to arbitrarily hide behind a fancied or intangible danger.'" *Id.,* quoting *In re Moser,* 138 Mich 302 (1904). "The tendency to incriminate must be a reasonable one; an answer may not be withheld because it might possibly under some conceivable circumstances form part of a crime." *In re Schnitzer,* 295 Mich 736, 740 (1940). For a general discussion of properly invoking the privilege against self-incrimination, see *People v Joseph,* 384 Mich 24, 28–32 (1970).

C. Use of Summary Contempt Proceedings

Because a witness's refusal to testify is a contempt committed in the immediate view and presence of the court, the court may punish it summarily. MCL 600.1711(1).

D. Civil Sanctions

MCL 600.1715(1) provides that the general penalty provisions for contempt of court contained in §1715 of the Revised Judicature Act apply "except as otherwise provided by law." MCL 600.1725 provides for coercive civil incarceration for a witness's refusal to testify when required to do so. Thus, it appears that the sole sanction available to courts in the case of a witness's refusal to testify is that imposed by §1725.

E. Excusing the Jury

To avoid the appearance of partiality, the court should excuse the jury before a witness is cited for contempt of court. *People v Williams,* 162 Mich App 542, 547 (1987).

5.14 Grand Jury Witness's Refusal to Testify

A. Statute

> "Any witness who neglects or refuses to appear or testify or both in response to a summons of the grand jury or to answer any questions before the grand jury concerning any matter or thing of which the witness has knowledge

> concerning matters before the grand jury after service of a true copy of an order granting the witness immunity as to such matters shall be guilty of a contempt and after a public hearing in open court and conviction of such contempt shall be fined not exceeding $10,000.00 or imprisoned not exceeding 1 year, or both. If the witness thereafter appears before the court to purge himself of such contempt, the court shall order the recalling of the grand jury to afford such opportunity. . . ."MCL 767.19c.

B. Civil Contempt Proceedings

In *Spalter v Wayne Circuit Judge,* 35 Mich App 156 (1971), the Court of Appeals held that all contempt citations under MCL 767.19c are civil. The holding of *Spalter* was contrary to dictum in *People v Johns,* 384 Mich 325 (1971), a Supreme Court decision that had been decided earlier in 1971. In *Johns*, the Supreme Court stated that a witness who failed to answer questions of a grand jury could be held in either civil or criminal contempt. *Id.* at 331. In *Spalter*, the Court of Appeals pointed out that §19c had been amended since the grand jury proceedings in the *Johns* case occurred. The 1970 amendment to §19c added the provision that "the court shall order the recalling of the grand jury" to allow the witness to purge himself or herself of contempt. The Court of Appeals therefore concluded that

> "a witness who has been convicted of contempt for neglecting or refusing to testify before a grand jury and who thereafter appears before the court expressing a desire to purge himself of the contempt has the absolute right at any time to have the court order the recalling of the grand jury so as to afford him an opportunity to purge himself." *Spalter, supra* at 163–64.

Thus, all contempt citations under §19c are civil because the witness "carries in his pocket the keys to his cell." *Spalter, supra* at 164–65.

"Where the grand jury has been finally discharged, a contumacious witness can no longer be confined since he has no further opportunity to purge himself of contempt." *Shillitani v United States,* 384 US 364, 371 (1971).

C. Sanctions for Repeated Refusal to Testify

Whether a grand juror witness's repeated refusal to testify before the same grand jury may be deemed one continuous contempt or several instances of contempt was discussed in *People v Walker,* 393 Mich 333 (1975). In that case, the Supreme Court held that whether there is one instance or several separate instances of disobedience, the one-year maximum penalty provisions of MCL 767.19c apply. The Court said that to permit each

refusal to testify to be punished by a maximum sentence to be served consecutively would effectively abrogate the statutory maximum penalty provision. *Walker, supra* at 339. Thus, whether the refusal to testify before the same grand jury occurs continuously, or in separate instances, the penalty may not exceed the one-year statutory maximum.

The Supreme Court's holding in *Walker, supra* does not apply, however, to the situation where the separate refusals to testify occur before different grand juries. When this occurs, the defendant may be sentenced anew for each separate and distinct act of contempt. *People v Walker,* 78 Mich App 402, 406–07 (1977). The Court of Appeals decision involved the same defendant involved in the Supreme Court decision. After the Supreme Court had decided that Walker's sentence could not be more than one year for repeated refusals to testify before the same grand jury, a new grand jury was convened to investigate the same subject matter. Walker was called before the new grand jury and again refused to testify. The Court of Appeals upheld Walker's second sentence for contempt even though when added to the first sentence it exceeded the statutory maximum of one year. *Id*.

5.15 Filing of False Pleadings and Documents

A. Statute and Court Rule

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (d) Parties to actions . . . for any deceit or abuse of the process or proceedings of the court." MCL 600.1701(d).

MCR 2.114 requires "documents" (pleadings, motions, affidavits, and other papers required by the court rules) to be signed or verified in certain cases. MCR 2.114(A). False declarations in documents are the subject of MCR 2.114(B)(2), which states:

> "If a document is required or permitted to be verified, it may be verified by
>
> "(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or
>
> "(b) except as to an affidavit, including the following signed and dated declaration: 'I declare

> that the statements above are true to the best of my information, knowledge, and belief.
>
> "In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (B)(2)(b) may be found in contempt of court."*

*See also MCL 600.852(2) and MCR 5.114(B)(2), which auhtorize punishment for contempt of persons filing false documents with the probate court.

B. Indirect Contempt

In *In re Collins,* 329 Mich 192, 196 (1950), the Court held that filing false pleadings constitutes indirect contempt. The filing of false pleadings may not be summarily punished because it is not an act within the immediate view and presence of the court.

C. False or Evasive Testimony or Pleading

A witness's false or evasive testimony that conflicted with other witnesses' testimony was found contumacious in *In re Scott,* 342 Mich 614, 617–18 (1955). See also *In re Murchison,* 340 Mich 151, 155 (1954) (false testimony before a grand jury may be punished by contempt power).

In *People v Little,* 115 Mich App 662 (1982), a criminal defendant moved to withdraw his guilty plea, claiming that he had lied during the plea proceeding. The judge issued an order to show cause why defendant should not be held in contempt. Defendant's attorney testified at the show-cause hearing that he advised defendant to plead guilty because "the case was unwinnable." The Court of Appeals reversed the criminal contempt citation, finding that it was not proved beyond a reasonable doubt that defendant's false statements at the plea proceeding were culpable. *Id.* at 665.

5.16 Parties and Attorneys in Civil Cases Who Violate Discovery Orders

A. Statute and Court Rules

MCL 600.1701(g) allows the court to punish as contempt disobedience of its orders. That statute states:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *

> (g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court."

MCR 2.313(A) states that a party may obtain an order compelling discovery. MCR 2.313(B) provides sanctions for failure to provide or permit discovery after such an order has been issued. That rule states, in pertinent part:

> "(1) *Sanctions by Court Where Deposition Is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by a court in the county or district in which the deposition is being taken, the failure may be considered a contempt of that court.
>
> "(2) *Sanctions by Court in Which Action Is Pending.* If a party or an officer, director, or managing agent of a party, or a person designated . . . to testify on behalf of a party, fails to obey an order to provide or permit discovery . . . , the court in which the action is pending may order such sanctions as are just, including, but not limited to the following:
>
> * * *
>
> "(d) in lieu of or in addition to the foregoing orders, an order treating as contempt of court the failure to obey an order, except an order to submit to a physical or mental examination."

B. Attorneys

The sanctions provided by the predecessor to MCR 2.313 were referred to in *Richards v O'Boyle,* 21 Mich App 607 (1970). The Court of Appeals stated than an attorney who did not comply with the rules for expeditious handling of discovery proceedings and who did not submit answers to defendant's interrogatories could be held in contempt. *Id.* at 611–12.

C. Refusal to Submit to Paternity Test

In *Bowerman v McDonald,* 431 Mich 1, 23 (1988), the Michigan Supreme Court held that a putative father's refusal to submit to court-ordered blood testing or tissue typing could be punished by contempt, although a default judgment could not be entered against the putative father. In response to *Bowerman,* the Legislature amended MCL 722.716 to allow for entry of a default judgment in such cases. MCL 722.716(1)(a).

5.17 Criticisms of the Court

A. Statute

MCL 600.1701(*l*) provides for a finding of contempt following criticism of a judge or court proceeding in certain circumstances:*

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (*l*) The publication of a false or grossly inaccurate report of its proceedings, but no court shall punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court."

*See Section 3.14(C) for a discussion of the contemnor's right to have the proceedings heard by another judge in such cases.

B. Freedom of Speech

Criticisms of a court have resulted in contempt proceedings against the speaker or writer. *In re Gilliland,* 284 Mich 604 (1938), *In re Turner,* 21 Mich App 40 (1969), and *Pennekamp v Florida,* 328 US 331, 347 (1945). However, much respect must be given to the freedom of public comment. In *Pennekamp, supra,* the United States Supreme Court stated:

> "Courts must have power to protect the interests of prisoners and litigants before them from unseemly efforts to pervert judicial action. In the borderline instances where it is difficult to say upon which side the alleged offense falls, we think the specific freedom of public comment should weigh heavily against a possible tendency to influence pending cases. Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice."

Michigan courts have also recognized that it is a proper exercise of the rights of free speech and press to criticize the courts. *Gilliland, supra* at 610.

C. Test to Determine Whether Criticism Is Contumacious

In *Gilliland, supra* at 610–11, the Michigan Supreme Court stated that the critic should not be subject to contempt proceedings unless the criticism tends to "impede or disturb the administration of justice." *In re Turner,* 21 Mich App 40 (1969) also recognized the right of free discussion and re-

emphasized the importance it must be given in a contempt proceeding based on criticism of a court. In providing a guideline for deciding when comment should be subject to contempt proceedings, the Court of Appeals said:

> "In adhering to the belief that free discussion of the problems of society is a cardinal principle of Americanism, a principle which all are zealous to preserve, we conclude that inaccurate comment, false comment, even vicious comment regarding the court which does not affect pending litigation must not be dealt with by the contempt power as a means of assuring the just exercise of the judicial process."*Id.* at 51, quoting *Pennekamp, supra* at 346.

There must be "an immediate peril of undue influence or coercion upon pending litigation" before the contempt power may be used to punish public criticism of the court. *Turner, supra* at 56.

In *In re Contempt of Dudzinski,* 257 Mich App 96 (2003), the alleged contemnor, Dudzinski, was a spectator in the courtroom during a motion hearing in a civil lawsuit brought by the personal representative of a person fatally shot by a police officer. Dudzinski wore a shirt containing the phrase "Kourts Kops Krooks." The trial court found that the shirt affected the fair administration of justice and ordered Dudzinski to remove it or leave the courtroom. Dudzinski refused and invoked his First Amendment right to freedom of expression. The trial court found Dudzinski in criminal contempt of court and sentenced him to 29 days in jail. Dudzinski served the full term. *Id.* at 97–99.

The Court of Appeals concluded that the trial court violated Dudzinski's First Amendment right to freedom of expression by ordering him to remove the shirt or leave the courtroom because the "speech" at issue did not constitute an imminent threat to the administration of justice. *Id.* at 102–04, relying on *Norris v Risley,* 918 F2d 828, 832 (CA 9, 1990). The Court of Appeals distinguished the facts in this case from those in *In re Contempt of Warriner (City of Detroit v Warriner),* 113 Mich App 549 (1982), where a spectator at a bail hearing raised his fist and shouted. *Dudzinski, supra* at 102–03. The Court in *Dudzinski* also distinguished *Norris, supra*, where the United States Court of Appeals held that the appearance of 15 spectators wearing "Women Against Rape" buttons at the defendant's jury trial posed an unacceptably high risk of depriving the defendant of a fair trial. In *Dudzinski,* the Court of Appeals emphasized that the allegedly contumacious behavior occurred at a pretrial hearing rather than a jury trial and noted that Dudzinski was only one of three persons wearing the shirts. *Dudzinski, supra*.

Although the Court of Appeals concluded that the trial court violated Dudzinski's constitutional rights by ordering him to remove the shirt or leave the courtroom, the Court held that the trial court did not abuse its

discretion by holding Dudzinski in contempt for failing to obey its order. The Court of Appeals stated that even though "the statement on [Dudzinski's] shirt did not constitute an imminent threat to the administration of justice and was constitutionally protected speech, [Dudzinski's] willful violation of the trial court's order, regardless of its legal correctness, warranted the trial court's finding of criminal contempt." *Dudzinski, supra* at 111, citing *Kirby v Michigan High School Athletic Ass'n,* 459 Mich 23, 40 (1998), and *State Bar v Cramer,* 399 Mich 116, 125 (1976).

5.18 Obstructing Judicial Process or Service

MCL 600.1701(h) states, in pertinent part:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (h) . . . for any other unlawful interference with or resistance to the process or proceedings in any action."

5.19 Improper Attempts to Affect Witness Testimony

A. Statute

MCL 600.1701(h) states, in pertinent part:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (h) . . . for unlawfully detaining any witness or party to an action while he is going to, remaining at, or returning from the court where the action is pending for trial, or for any other unlawful interference with or resistance to the process or proceedings in any action."

B. Interference With Witness

"The intimidation of witnesses is naturally a criminal matter,—one in which the damages are to the public and the courts as well as to litigants." *Russell v Wayne Circuit Judge,* 136 Mich 624, 625 (1904).

Threatening a complaining witness in a criminal case may be punished as contempt of court. *In re Contempt of Nathan (People v Traylor),* 99 Mich App 492, 493 (1980). A person may be found in contempt of court for attempting to prevent the attendance of a person not yet subpoenaed as a witness. *Montgomery v Circuit Judge,* 100 Mich 436, 441 (1894).

C. Bribery

To bribe or attempt to bribe a witness in a pending case is a most serious contempt of court, and one which should be promptly dealt with. *Nichols v Judge of Superior Court,* 130 Mich 187, 197 (1902).

5.20 Improper Attempts to Affect Jurors and Potential Jurors

A. Statute

MCL 600.1701(h) gives the court authority to punish as contempt unlawful interference with its proceedings. That statute states, in pertinent part:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (h) . . . for any other unlawful interference with or resistance to the process or proceedings in any action."

B. Site of Contact With Jurors Irrelevant

In *Gridley v United States,* 44 F2d 716, 745 (CA 6, 1930), a litigant spoke to jurors in a restroom. The court said: "If a litigant or his friend approaches a juror in such a way as to constitute misbehavior within the meaning of the statute, such misbehavior is so near to the presence of the court as to obstruct the administration of justice within its meaning no matter where it takes place." *Id.* at 746.

C. Prejudice to a Party Unnecessary

In *Langdon v Judges of Wayne Circuit Court,* 76 Mich 358, 371 (1889), the Supreme Court found that a trial court has jurisdiction to punish contumacious misconduct even though no prejudice resulted to either party. Where the contemnor interfered while a suit was pending and tried to bring about disagreement among jurors by bribery, the court had jurisdiction to punish because the act was calculated to defeat, impair, impede, or prejudice the rights or remedy of a party. *Id.*

5.21 Fiduciaries Who Violate Court Orders

A. Statute

MCL 600.1701(g) gives the court broad authority to punish as contempt disobedience of its orders. That statute states:

> "The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court."

See MCR 5.203 for required procedures when a fiduciary is not properly administering an estate. These procedures do not preclude contempt proceedings. MCR 5.203(D).

B. Failure to Comply With Court Order

A fiduciary who fails to comply with a court order may be punished for contempt. *People v McCartney,* 132 Mich App 547 (1984), aff'd on remand 141 Mich App 591 (1985). *McCartney* involved a conservator who misused funds belonging to a minor's estate. At a show cause hearing, the probate court held the conservator in contempt after she failed to show proof of deposit of the funds in the name of the minor.

5.22 Contempt of Court Under the Juvenile Code

A. Statutes and Court Rule

A provision of the Juvenile Code, MCL 712A.26, provides "juvenile courts" (Family Division of Circuit Court) with contempt powers. That statute states:

> "The court shall have the power to punish for contempt of court under . . . MCL 600.1701 to 600.1745, any person who willfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued to enforce this chapter."

MCL 712A.6a allows the court to require the attendance at dispositional hearings of the parent or guardian of a juvenile over whom the court has taken jurisdiction for a criminal offense committed by the juvenile. The statute states, in pertinent part, that "[a] parent or guardian who fails to attend the juvenile's hearing without good cause may be held in contempt and subject to fines."

MCR 3.928 also provides a description of the applicable procedures and penalties for contempt of court:

> **"(A) Power.**The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26. A parent, guardian, or legal custodian of a juvenile who is within the court's jurisdiction and who fails to attend a hearing as required is subject to the contempt power as provided in MCL 712A.6a.
>
> **"(B) Procedure.**Contempt of court proceedings are governed by MCL 600.1711, 600.1715, and MCR 3.606. MCR 3.982–3.989 governs proceedings against a minor for contempt of a minor personal protection order.
>
> **"(C) Contempt by Juvenile.**A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 30 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separate and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules."

B. Common Uses of Contempt Power in Juvenile and Child Protective Proceedings

In child protective proceedings, the court has statutory authority to permanently restrain a "nonparent adult" from coming into contact with the child. The court may also order the "nonparent adult" to comply with the Case Service Plan. In addition to criminal penalties for violations of such orders, the court may exercise its criminal or civil contempt powers for violation of these provisions. See MCL 712A.6b(5).

MCL 712A.13a(4)–(5) give the court authority to order a parent, "nonparent adult," or other person out of the child's home before trial if the petition contains allegations of abuse. A person who violates a court order issued under §13a may be found guilty of criminal contempt and punished by not more than 90 days' imprisonment and a fine of not more than $500.00. MCL 764.15f(1)(e).

As noted above, the "juvenile court" may cite a parent for contempt in delinquency cases for failure to attend a hearing without good cause. MCL 712A.6a and MCR 3.928(A). A "juvenile court" may also punish persons who fail to appear in court in response to a summons. MCL 712A.13.

The "juvenile court" may also enforce its reimbursement orders through use of the contempt power. See MCL 712A.18(2) and (3). If a parent or other adult legally responsible for the child's care fails or refuses to obey a reimbursement order, the court that entered the order may order a wage or salary assignment to recover the amount of unpaid support. MCL 712A.18b. The court may also enforce an order assessing attorney costs through its contempt powers. See MCL 712A.17c(8), MCL 712A.18(5), and MCR 3.915(E). See, generally, *In re Reiswitz,* 236 Mich App 158, 172 (1999).

C. Enforcement of Personal Protection Orders (PPOs) Against Juveniles

The Family Division of Circuit Court has jurisdiction over proceedings involving a personal protection order issued under MCL 600.2950 and 600.2950a, in which the respondent is a juvenile less than 18 years of age. MCL 712A.2(h).* Court rules governing procedure for juvenile violations of personal protection orders are found in MCR 3.982–3.989. Violations of personal protection orders may be punished by contempt sanctions.

*See Section 5.11, above, for a brief discussion of the enforcement of PPOs against adults and a cross-reference to a more complete source.

D. Jurisdiction

A "juvenile court" has jurisdiction of contempt proceedings involving contempt of its orders even where the contemnor is over age 19 (when jurisdiction over the child must terminate in most delinquency cases) at the time of the hearing. *In re Summerville,* 148 Mich App 334, 341 (1986). Thus, the court may punish as contempt of court the failure to reimburse

costs after it has terminated jurisdiction over the juvenile. *In re Reiswitz,* 236 Mich App 158 (1999).

E. Authority to Punish Juvenile for Contempt Committed in Proceedings Not Under the Juvenile Code

It is unclear whether a court has authority to punish a juvenile for contempt of court, where he or she commits contumacious acts while appearing in proceedings not governed by the Juvenile Code. MCL 600.1701 gives all courts of record the authority to punish *persons* who are found in contempt of court. However, MCL 712A.2(a)(1) assigns the "juvenile court" exclusive jurisdiction, superior to and regardless of the jurisdiction of any other court, over any child under 17 years of age found to have violated any criminal law or ordinance. Thus, an argument could be made that this statutory grant of exclusive jurisdiction to the "juvenile court" divests "adult courts" of authority to *impose sanctions* against a juvenile for contempt in proceedings not governed by the Juvenile Code.

However, such a conclusion is contrary to the rationale of the Michigan Supreme Court's decision in *People v Joseph,* 384 Mich 24, 34-35 (1970). In that case, the defendant was convicted of criminal contempt in Wayne County Circuit Court for having refused to answer questions put to him by a one-man grand jury convened by that court. On appeal to the Supreme Court, the defendant challenged the jurisdiction of the Wayne County Circuit Court on the basis of a statute, MCL 726.11, conferring exclusive jurisdiction of all prosecutions and proceedings for crimes committed within the corporate limits of the city of Detroit upon Recorder's Court. In rejecting that challenge, the Supreme Court stated:

> "While contempt, like other crimes, is an affront to society as a whole, it is more directly an affront to the justice, authority and dignity of the particular court involved. Accordingly, the court with jurisdiction over the proceedings wherein the alleged contempt occurred has jurisdiction over contempt proceedings." *Id.* at 35.

Thus, in *Joseph,* the Supreme Court concluded that the exclusive statutory grant of authority in criminal cases to Recorder's Court did not divest Wayne County Circuit Court of the authority to utilize contempt sanctions to enforce its orders. Likewise, in the case of contumacious conduct by a juvenile appearing in "adult court," it cannot be said that the grant of exclusive jurisdiction over children under seventeen to "juvenile court" divests the "adult court" of its authority to utilize appropriate contempt sanctions, including committing the juvenile.

If a juvenile is committed to a detention facility, he or she must be confined in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the requirements of the Juvenile Code. MCR 3.935(D)(4). MCL 712A.16(1) establishes the general rule that

a juvenile may not be jailed unless he or she is over age 15 and the juvenile's habits or conduct are considered a menace to other children, or unless the juvenile might not otherwise be safely detained. The juvenile must be placed in a room or ward out of sight and sound of adult prisoners, and for a period not to exceed 30 days, unless longer detention is necessary for service of process. *Id.* and MCL 764.27a(2).

5.23 Table 2: Procedures and Sanctions for Common Forms of Contempt

The following table indicates whether the acts described in this chapter constitute direct contempt or indirect contempt, and whether the acts may be treated as civil or criminal contempt of court. See Chapter 3 for detailed treatment of the required procedures for each type of contempt proceeding.

Contumacious Conduct	Whether Conduct Is Direct or Indirect Contempt	Whether Conduct Is Civil or Criminal Contempt
Attorney's Misconduct in Courtroom **See Section 5.2**	Always direct contempt. Summary contempt proceedings may be instituted if necessary to restore order and preserve the court's authority.	Most reported cases involve criminal sanctions, but civil sanctions may be appropriate where it is still possible to restore order in the courtroom.
Attorney's Failure to Appear in Court **See Section 5.3**	Always indirect contempt.	Civil or criminal contempt proceedings may be instituted. Attorney's wilfulness need not be proven to order civil sanctions, including costs of assembling jury panel. *In re Contempt of McRipley (People v Gardner),* 204 Mich App 298, 301–02 (1994).
Failure of Witness to Attend Court After Being Served With a Subpoena **See Section 5.4**	Always indirect contempt.	Civil or criminal contempt proceedings may be instituted.
Juror Misconduct **See Section 5.5**	Usually indirect contempt.	Civil or criminal contempt proceedings may be instituted.

Contumacious Conduct	Whether Conduct Is Direct or Indirect Contempt	Whether Conduct Is Civil or Criminal Contempt
Violation of Court Orders **See Section 5.6**	May be either direct or indirect contempt. Summary punishment may be imposed if the violation occurred in the immediate view and presence of the court.	Civil or criminal contempt proceedings may be instituted.
Violation of Court Order Regarding Nuisance **See Section 5.7**	Always indirect contempt.	Criminal contempt proceedings must be instituted. *Michigan ex rel Wayne Pros v Powers,* 97 Mich App 166, 171 (1980).
Failure to Pay Money Judgment **See Section 5.8**	Always indirect contempt.	Civil or criminal contempt proceedings may be instituted, but a coercive civil sanction may better achieve the desired result.
Failure to Pay Child or Spousal Support **See Section 5.9**	Always indirect contempt.	Civil contempt proceedings are mandated by MCL 552.631(1), but criminal proceedings may be appropriate in certain situations. *Borden v Borden,* 67 Mich App 45, 49 n 1 (1976).
Violation of Parenting Time Order in Divorce Judgment **See Section 5.10**	Always indirect contempt.	If it is possible to restore the status quo by granting additional parenting time, civil contempt proceedings may be instituted. If it is not possible to restore the status quo, criminal contempt proceedings may be instituted. *Jaikins v Jaikins,* 12 Mich App 115, 121 (1968).
Violation of Personal Protection Orders **See Section 5.11**	Usually indirect contempt.	Criminal contempt proceedings are usually instituted, but statute and court rule allow for imposition of civil sanctions, which may be appropriate in certain situations (e.g., respondent fails to relinquish property).

Contumacious Conduct	Whether Conduct Is Direct or Indirect Contempt	Whether Conduct Is Civil or Criminal Contempt
Criminal Defendant's Disruptive Behavior in Court **See Section 5.12**	Always direct contempt. Summary contempt proceedings may be instituted if necessary to restore order and preserve the court's authority.	Civil or criminal contempt sanctions may be imposed.
Witness's Refusal to Testify **See Section 5.13**	Always direct contempt. Summary contempt proceedings may be instituted if necessary to restore order and preserve the court's authority.	Under MCL 600.1725, a coercive (civil) commitment is the prescribed punishment.
Grand Jury Witness's Refusal to Testify **See Section 5.14**	Always direct contempt. Summary contempt proceedings may be instituted if necessary to restore order and preserve the court's authority.	Only civil contempt sanctions may be imposed. *Spalter v Wayne Circuit Judge,* 35 Mich App 156, 164–65 (1971).
Filing of False Pleadings and Documents **See Section 5.15**	Always indirect contempt.	Most reported cases involve criminal contempt proceedings.
Parties and Attorneys in Civil Cases Who Violate Discovery Orders **See Section 5.16**	Always indirect contempt.	Civil or criminal contempt proceedings may be instituted.
Criticisms of the Court **See Section 5.17**	May be either direct or indirect contempt. Summary punishment may be imposed if the violation occurred in the immediate view and presence of the court.	Civil or criminal contempt proceedings may be instituted.

Contumacious Conduct	Whether Conduct Is Direct or Indirect Contempt	Whether Conduct Is Civil or Criminal Contempt
Obstructing Judicial Process or Service **See Section 5.18**	Always indirect contempt.	Civil or criminal contempt proceedings may be instituted.
Improper Attempts to Affect Witness Testimony **See Section 5.19**	Always indirect contempt.	Criminal contempt proceedings must be instituted. *Russell v Wayne Circuit Judge,* 136 Mich 624, 625 (1904).
Improper Attempts to Affect Jurors and Potential Jurors **See Section 5.20**	Always indirect contempt.	Criminal contempt proceedings must be instituted.
Fiduciaries Who Violate Court Orders **See Section 5.21**	Always indirect contempt.	Civil or criminal contempt proceedings may be instituted.
Contempt of Court Under the Juvenile Code **See Section 5.22**	May be either direct or indirect contempt. Summary punishment may be imposed if the violation occurred in the immediate view and presence of the court.	Civil or criminal contempt proceedings may be instituted.